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The history of this legislation is interesting. Similar acts are in force in many jurisdictions, but their validity has in several instances been subjected to vigorous attack. In fact an earlier New York statute which, except for being held to apply to merchants only, was identical to the present act, was declared unconstitutional on the two distinct grounds that it limited the liberty to contract and denied to merchants the equal protection of the laws. *Wright* v. *Hart*, 182 N. Y. 330, 75 N. E. 404. Other states, however, held such statutes unconstitutional solely on the ground that a special small class was benefited. *McKinster* v. *Sager*, 163 Ind. 671, 72 N. E. 854; *Off & Co.* v. *Morehead*, 235 Ill. 40, 85 N. E. 264. When such statutes therefore were amended to a form similar to that of the present New York statute, limiting the effect of the act to no special class, they were upheld in the very jurisdictions which formerly condemned them. *Hirth, Krause Co.* v. *Cohen*, 177 Ind. 1, 97 N. E. 1; *Johnson* v. *Beloosky*, 263 Ill. 363, 105 N. E. 287. And, except in Utah, such an act is uniformly held unobjectionable. *Lemieux* v. *Young*, 211 U. S. 489; *Kidd, Dater & Price Co.* v. *Musselman Grocery Co.*, 217 U. S. 461; *Squire Co.* v. *Tellier*, 185 Mass. 18, 69 N. E. 312; *McDaniels* v. *J. J. Conelly Shoe Co.*, 30 Wash. 549, 71 Pac. 37; *Kett* v. *Masker*, 86 N. J. L. 97, 90 Atl. 243. But see *Block* v. *Schwartz*, 27 Utah 387, 76 Pac. 22. The objection that this is class legislation seems accordingly to be effectively silenced, but the New York court had also decided that it unduly limited the right to contract. In order to uphold the validity of the present act, therefore, the court was forced to reverse itself, which it very frankly did.

CORPORATIONS — RIGHT OF TRUSTEE IN BANKRUPTCY AGAINST TRANSFEREE OF STOCK ISSUED FOR OVERVALUED PROPERTY — "ACTUAL FRAUD" — CONTRACT BY CORPORATION TO BUY BACK THE STOCK. — A., B. and C. were the incorporators of a company with a capital stock of $60,000, promoted by A., B., C. and D. Stock to the par value of $21,900 was issued as fully paid up to A. and B. in return for a secret process received from them. Neither A., B., C. nor D. believed the process to be worth $21,900 at the time; but all of them believed the corporation could pay dividends on the total capital stock. D. contracted to buy of A. and B. 300 shares, or half the capital stock, for $15,000, reserving an option to return the shares and receive the money back at any time. After paying in $13,600, he exercised the option and the corporation executed a mortgage to him to secure the indebtedness. The trustee in bankruptcy petitioned to have the mortgaged property applied to the payment of the general creditors who had become such after D. filed his mortgage. *Held*, that the property could not be applied to their benefit. *Durant* v. *Brown*, 236 Fed. 609.

For a discussion of the case, see NOTES, p. 503.

DIVORCE — ALIMONY — REFUSAL TO PAY ALIMONY PUNISHED AS CONTEMPT. — In divorce proceedings, the court ordered the husband to pay alimony *pendente lite*. On his failure to pay he was ordered to show cause why he should not be committed for contempt. He answered that he had no property and was unable to procure employment. After jury trial with verdict finding the defendant guilty of contempt, an order of commitment was made from which the defendant appeals. *Held*, that the commitment was proper. *Fowler* v. *Fowler*, 161 Pac. 227 (Okla.).

The Oklahoma constitution expressly forbids imprisonment for debt. OKLA. CONST., Art. 2, § 13. The obligation to pay alimony is an expression of a social duty, and that it is not a debt is shown by the fact that the amount may be varied in the discretion of the court granting it. *Cox* v. *Cox*, 3 Add. Ecc. 276. See *Amos* v. *Amos*, 4 N. J. Eq. 171; *Moe* v. *Moe*, 39 Wis. 308. As a result the great weight of authority is to the effect that commitment for failure to pay alimony is not imprisonment for debt. *Andrew* v. *Andrew*, 62 Vt. 495, 20 Atl.

817; *Wightman* v. *Wightman*, 45 Ill. 167; *Chase* v. *Ingalls*, 97 Mass. 524. *Contra*, *Coughlin* v. *Ehlert*, 39 Mo. 285; *Steller* v. *Steller*, 25 Mich. 159. *Cf. Haines* v. *Haines*, 35 Mich. 138. See *Murray* v. *Murray*, 84 Ala. 363, 4 So. 239; 11 HARV. L. REV. 552. Granting that imprisonment for failure to pay alimony is constitutional, some cases hold that a court of equity is without power to punish a defendant for failure to pay alimony. *Ex parte Todd*, 119 Cal. 57, 50 Pac. 1071; *Messervy* v. *Messervy*, 85 S. C. 189, 67 S. E. 130. However, the objection does not rest in lack of power, but rather in the practical difficulty of requiring a person to find work while imprisoning him during the period in which he is supposed to find it. *Webb* v. *Webb*, 140 Ala. 262, 37 So. 96. But the application of pressure in such a case will often energize a defendant without ambition, or bring a contumacious one to terms. So the balance of convenience would seem to favor commitment in this class of cases. *Lester* v. *Lester*, 63 Ga. 356; *Lansing* v. *Lansing*, 41 How. Prac. (N. Y.) 248.

DUTY OF CARE — TRESPASSERS — MISFEASANCE AND NONFEASANCE — MORAL DUTY. — Plaintiff's intestate, while riding as a trespasser on the top of a freight car of a railroad company, was struck by a wire of the defendant company, which a storm had caused to sag so low as to endanger the safety of all persons on cars of that character and which the defendant had failed to repair. As a result he was thrown to the ground and killed. There was evidence tending to show that the defendant was a trespasser in carrying its wires over the railroad company's line. *Held*, that the plaintiff may recover. *Ferrell* v. *Durham Traction Co.*, 90 S. E. 893 (N. C.).

As the deceased was a trespasser and the death was occasioned by a mere condition of the premises, it seems clear that no recovery could be had against the railroad company. See Jeremiah Smith, "Landowners' Liability to Children," 11 HARV. L. REV. 349. Now a landowner, or those claiming under him, may recover from one having a right to use the premises for nonfeasance as to a condition of the premises over which he has been given control. *Hawkin* v. *Shearer*, 56 L. J. (Q. B.) 284. *Cf. Elliott* v. *Roberts & Co.*, 32 Times L. R. 478. See 30 HARV. L. REV. 186. So it would seem, on a doctrine akin to estoppel, that recovery might also be had from a trespasser under similar circumstances. Hence, in the principal case, if the deceased had been an employee of the railroad company, the defendant would be liable. But, as both the deceased and the defendant were trespassers upon the premises of another, its liability must be determined upon elementary principles. Where there is foreseeability of danger to others, one must modify his conduct accordingly. See *Garland* v. *B. & M. R. Co.*, 76 N. H. 556, 86 Atl. 141. So if the death had been caused by a continuously active force, such as electricity, the defendant would be liable. See 28 HARV. L. REV. 818. But here there was no action by the defendant; its liability, if any, must be founded upon nonfeasance. But there was no legal relation between the defendant and the deceased from which a duty to act would arise. It would seem that the case is another instance of liability founded upon moral duty. See 30 HARV. L. REV. 289. But it is of especial significance, as hitherto the so-called "humanitarian doctrine" has been applied only to railroads and other inherently dangerous instrumentalities.

EVIDENCE — OPINION EVIDENCE — NON-EXPERT OPINION AS TO AGE. — In a prosecution for selling liquors to minors, non-expert witnesses were allowed to give their opinions, based upon the appearance of the vendees, that the vendees were under eighteen years of age. *Held*, that the evidence was improperly admitted. *State* v. *Koettgen*, 99 Atl. 400 (N. J.).

Whether appearance may be used to prove age, is a matter to be determined, like all questions of relevancy, by a balance of convenience; the probative value of the evidence must outweigh any tendency to prejudice or confuse the jury. Clearly the probative value of the appearance of a grown person is